U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33898673

Date: OCT. 29, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a pole fitness performer in the area of pole and arial sport who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition) after issuing a notice of intent to deny (NOID). The Director concluded the Petitioner did not show that the totality of the evidence demonstrated her eligibility in a final merits determination. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field

through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is an accomplished pole fitness performer who will continue to perform in her sport as well as teaching.

We begin noting an issue the Petitioner raises on appeal. The Petitioner noted the Director's decision characterized her as a pole dancer instead of a pole fitness performer. Although we agree the Director utilized that phrase, we observe that they treated her as a performer and an athletic competitor within their analysis.

Now to the procedure that occurred before the Director, and this issue will be determinative of our appellate decision. The Petitioner filed the petition discussing how her evidence fit into each of the regulatory criteria. The Director issued the NOID indicating she met three of the criteria, to include the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Also within the NOID and under the final merits analysis, the Director discussed how the Petitioner's claims and evidence under the regulatory topical areas (awards, judging, display of her work, and contributions to the field) did not demonstrate her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation.

When the Petitioner responded to the NOID, she did not present her claims and evidence oriented towards the regulatory topical areas the Director laid out in the NOID. Instead, she organized the response into three large areas:

(1) She will continue to work in her field of expertise in the United States;
(2) She offered other approved administrative cases she felt contained similar fact patterns to her case meaning her case should also be approved; and
(3) She included "additional evidence of sustained national or international acclaim showing that [she] is at the top of her field of endeavor . . . . [and] her achievements have been recognized in the field of expertise, including that [she] is one of that small percentage who has risen to the very top of the field of endeavor."

In the Director's denial, they noted the Petitioner, through her representative, submitted evidence without addressing which regulatory topical area the evidence applied to. The Director further noted that provided they offer a reasoned consideration of the overall filing, they are not required to address every claim or every piece of evidence.

On appeal, the Petitioner notes that the evidence she submitted in response to the NOID should be counted towards the final merits analysis. We agree that a final merits determination should consider the petition in its entirety to determine eligibility. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

But for the agency to be able to make such a consideration, it is the Petitioner's responsibility to inform USCIS how her claims and evidence satisfy which eligibility requirements. *Nolasco-Amaya v. Garland*, 14 F.4th at 1012–13; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992); *see also Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1540 n.3 (10th Cir. 1996) (concluding that where the evidence in the record is voluminous, it is imperative that an appellant provide specific references to record); *Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008) (citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion). The truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition of burden of proof from *Black's Law Dictionary* (12th ed. 2024) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

Second, a petitioner must satisfy the burden of persuasion, meaning they must establish the degree to which their arguments and evidence should persuade or convince USCIS that the requisite eligibility parameters have been met (i.e., the obligation to persuade the trier of fact of the truth of a proposition). *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). The level at which petitioners must persuade in the present context is the preponderance of the evidence. Whether a petitioner is able to show that a particular fact or event is more likely than not to occur is the determinant of whether they have met the preponderance of the evidence standard of proof.

But in the present case, the Petitioner has not satisfied her burden. When she filed a 26-page NOID response and hundreds of pages of evidence, it was her duty to inform USCIS of how that submission adhered to the governing statutory, regulatory, and policy provisions. And the failure to meet that burden means the Director was correct, as they would have been forced to guess at how she was eligible and that would not be proper. *Bronner on Behalf of Am. Stud. Ass'n v. Duggan*, 962 F.3d 596, 611 (D.C. Cir. 2020) (citing *Schneider v. Kissinger*, 412 F.3d 190, 200 n.1 (D.C. Cir. 2005); *Sierra Club v. EPA*, 925 F.3d 490, 496 (D.C. Cir. 2019)). The filing party has an obligation to spell out its

arguments squarely and distinctly. *Schneider*, 412 F.3d at 200 n.1. Before the Director, the Petitioner did not meet that obligation. Even though the Petitioner has received an adverse determination on the issue of her NOID response, that does not preclude her from filing a new petition and informing USCIS of how those same claims and evidence should apply to the extraordinary ability classification's requirements.

We now turn from our discussion on procedure, to the merits of one of the Petitioner's claims. Regarding the Petitioner's awards, the Director indicated the evidence satisfied the criterion's requirements during the antecedent step, but in the final merits determination used language conveying the evidence did not meet the criterion's requirements. We agree with the Director's determination in the final merits analysis that the record does not contain evidence demonstrating the Petitioner's eligibility under that criterion. This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

Although some of the competitions in which the Petitioner claims she received a prize or an award bear the word "National" within the competition's title, the Petitioner has not provided evidence to establish that these competitions are nationally or internationally recognized. Even if the Petitioner were to establish the competitions are nationally or internationally recognized, this level of acknowledgement does not automatically impute such recognition to their prizes or awards. A prize or an award does not categorically garner national or international recognition from the competition in which it is awarded, nor is it automatically derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. USCIS policy speaks to this issue stating:

> Examples of qualifying awards may include, but are not limited to:
>
> - Certain awards from well-known national institutions or well-known professional associations.

See generally 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). We highlight two important qualifiers within that bullet point: (1) certain awards; and (2) well-known.

Regarding the Policy Manual's phrase "certain awards," the top prize or top award from a "well-known" nationally or internationally recognized competition or institution, in some cases, could result in adequate recognition to satisfy this criterion's requirements. But the record must contain probative evidence demonstrating the level at which the competition or institution is recognized in the field, and that evidence should establish the level at which the competition or institution is "well-known." This recognition should be evident through specific means; for example but not limited to, national- or international-level media coverage.

Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award—or a competition or institution—is nationally or internationally recognized. Sufficiently probative evidence that a prize, award, competition, or

institution is nationally or internationally recognized is generally material from sources besides the issuing entity. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021). Because the record lacks such evidence, we withdraw the Director's favorable determination under the regulatory criteria (at 8 C.F.R. § 204.5(h)(3)(i)) and we agree with their adverse conclusion about this criterion in the final merits determination.

III. CONCLUSION

Because we withdrew the Director's determination regarding the prizes or awards criterion, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. Because of that and the procedural shortcomings we detail above, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.